DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, Hawaii Administrative Rules, titled "Water Pollution Control," is amended and complied to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

§11-55-01

§11-55-17 Termination of permits and denial of renewal

§11-55-18 Reporting discontinuance or dismantlement

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements

§11-55-20 Effluent limitations in issued NPDES permits

§11-55-21 Schedule of compliance in issued NPDES permits

§11-55-22 Compliance schedule reports

§11-55-23 Other terms and conditions of issued NPDES permits

§11-55-24 National pretreatment standards and users of publicly owned treatment works

§11-55-25 Transmission to Regional Administrator of proposed NPDES permits

§11-55-26 Transmission to Regional Administrator of issued NPDES permits

§11-55-27 Renewal of NPDES permits

§11-55-28 Monitoring

§11-55-29 Recording of monitoring activities and results

§11-55-30 Reporting of monitoring results

§11-55-31 Sampling and testing methods

§11-55-32 Malfunction, maintenance, and repair of equipment

§11-55-33 Agency board membership

§11-55-34 General permit definitions

§11-55-34.01 General permit policy

§11-55-34.02 General permit authority and adoption

§11-55-34.03 General permit terms

§11-55-34.04 General permit conditions

§11-55-34.05 Requiring an individual permit

§11-55-34.06 [Relationship of general and individual permit(s)]Reserved

Comment [RM1]: new

§11-55-34.07 Degree of waste treatment

§11-55-34.08 Notice of intent

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage

Comment [RM2]: deleted

Comment [RM3]: deleted

	Wastewater Associated with Well Drilling Activities
Appendix J	NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems
Appendix K	NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems
Appendix L	NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks
Appendix M	NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based substantially on Public Health Regulations, Chapter 37, Water Pollution Control, Department of Health, State of Hawaii. [Eff 5/25/74, am 1/20/75, 8/19/75, 1/31/81; R 11/27/81]

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of January 1, 2011 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of [July 1, 2011]July 1, 2012 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251 et. seq.

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action

threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a). (See 40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Adverse incident" means an unusual or unexpected incident that an operator has observed upon inspection or of which the operator otherwise becomes aware, in which:

(1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and

(2) The person or non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within state waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance;

stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to state waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any

threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to state waters or at water's edge adjacent to state waters. For calculating the annual treatment area, count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * four applications per year = twenty four miles to which pesticides are applied in a calendar year).

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act; chapter 342D, HRS; rules of the department; and which have been:

(1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or

(2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

"Applicator" means any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to state waters.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations

of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological control agents" are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. (Source: US Fish and Wildlife Service (FWS) Integrated Pest Management (IPM) Guidance, 2004)

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that:

(1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;

(2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaebacteria; or

(3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert

ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as an AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shut-downs for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.91(a)(4).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from state waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Decision-maker" means any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to state waters.

"Decision-maker who is or will be required to submit an NOI" means any decision-maker covered under Appendix M who knows or should have known that an NOI will be required for those discharges beginning 60 calendar days from when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. Excluded from this definition are those activities for which an NOI is required based solely on that decision-maker exceeding an annual treatment area threshold.

"Declared pest emergency situation" means the same thing as defined in section 11-54-4(e)(1).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" when used without qualification, means the "discharge of a pollutant". (See 40 CFR 122.2).

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into state waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or

termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

"Effluent" means any substance discharged into state waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

"EPA" means the U.S. Environmental Protection Agency.

"EPA approved or established total maximum daily loads (TMDLs)" (EPA Approved TMDLs) means those that are developed by a state and approved by EPA.

"EPA established TMDLs" are those that are issued by EPA.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into state waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters

with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product, (see 40 CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

"Large Entity" means any entity that is not a "small entity".

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the Regional Administrator in conjunction with the director.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Minimize" means to reduce and/or eliminate pollutant discharges to state waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and (b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

(1) From which there is or may be a discharge of pollutants;

(2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;

(3) Which is not a new source; and

(4) Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

(1) After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or

(2) After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter promulgated by the Administrator,

whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means an authorization issued to the owner or operator by the department to comply with the NPDES general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or

complying with the individual permit, notice of general permit coverage, or conditional "no exposure" exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure" certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operator" for the purpose of Appendix M, means any entity associated with the application of pesticides which results in a discharge to state waters that meets either of the following two criteria:

(1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or

(2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e)(2).

"Pest" means the same thing as defined in section 11-54-4(e)(1).

"Pest management area" means the area of land, including any water, for which an operator has responsibility and is authorized to conduct pest management activities as covered by Appendix M (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to state waters.

"Pesticide" means the same thing as defined in section 11-54-4(e)(1).

"Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide residue" includes that portion of a pesticide application that is discharged from a point source to state waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

"Recycled water" or "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Regional Administrator" means the Regional Administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.

"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small entity" means any:

(1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or

(2) local government that serves a population of 10,000 or less.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

(1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to state waters;

(2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and

(3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 11-54-1.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Target pest" means the organism(s) toward which pest management measures are being directed.

"Total maximum daily loads (TMDLs)" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute state waters.

"Water pollution" means the same thing as defined in section 342D-1, HRS.

"Water quality impaired" see "Impaired Water".

"Wetlands" means the same thing as defined in section 11-54-1.

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant."

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution control. (a) It is the public policy of this State:

(1) To conserve state waters;

(2) To protect, maintain, and improve the quality of state waters:

(A) For drinking water supply, and food processing;

(B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;

(C) For oceanographic research;

(D) For the conservation of coral reefs and wilderness areas; and

(E) For domestic, agricultural, industrial, and other legitimate uses;

(3) To provide that no waste be discharged into any state waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;

(4) To provide for the prevention, abatement, and control of new and existing water pollution; and

(5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

(b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23;

§11-55-02

33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

(1) At least one hundred eighty days before the discharge or construction begins or before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days expire;

(2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;

(3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;

(4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to state waters,

and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

(5) For any discharge from a regulated concentrated animal feeding operation. The permit application shall be made under 40 CFR §122.21;

(6) (Reserved); or

(7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b)(14)(x) or small construction activity as defined in 40 CFR §122.26(b)(15)(i) begins and is not qualified to obtain coverage under the general permit.

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly

authorized representative has supplied the missing information or otherwise corrected the deficiency.

(d) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of $1,000. This filing fee shall be submitted with the NPDES permit application and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

(1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a $1,000 filing fee which shall be submitted with the NPDES permit application;

(2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a $500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);

(3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the $1,000 filing fee which shall be submitted with the NPDES permit application;

(4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual

permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

(1) Meets the conditions of 40 CFR §§122.26(g)(1) through 122.26(g)(4), except 40 CFR §122.26(g)(1)(iii);

(2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;

(3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and

(4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

(f) (Reserved)

(g) Industrial activities, except construction activities under 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15), which provide calculations and certify that they do not discharge storm water to state waters are not required to obtain an individual permit or general permit coverage.

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A

and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-05 Receipt of federal information. The director shall receive any relevant information collected by the Regional Administrator prior to participation in the NPDES in a manner as the director and the Regional Administrator shall agree. Any agreement between the director and the Regional Administrator shall provide for at least the following:

(1) Prompt transmittal to the director from the Regional Administrator of copies of any NPDES permit applications, or other relevant information collected by the Regional Administrator prior to the state or interstate agency's participation in the NPDES; and

(2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the Regional Administrator which the Regional Administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the Regional Administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/25/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

§11-55-06 Transmission of information to Regional Administrator. The director shall transmit to the Regional Administrator copies of NPDES forms received by the State in a manner as the director and Regional Administrator shall agree. Any agreement between the

State and the Regional Administrator shall provide for at least the following:

(1) Prompt transmittal to the Regional Administrator of a complete copy of any NPDES form received by the State;

(2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;

(3) Procedures for acting on the Regional Administrator's written waiver, if any, of the Regional Administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular state waters or parts thereof subject to the limits in 40 CFR §123.24(d);

(4) An opportunity for the Regional Administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the Regional Administrator and to have the deficiency corrected. If the Regional Administrator's objection relates to an NPDES permit application, the director shall send the Regional Administrator any information necessary to correct the deficiency and shall, if the Regional Administrator so requests, not issue the individual permit until the department receives notice from the Regional Administrator that the deficiency has been corrected;

(5) Procedures for the transmittal, if requested by the Regional Administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and

(6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff

11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms. (a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

(1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and

accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

(A) The chief executive officer of the agency, or

(B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA);

(4) For a trust. By a trustee; or

(5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent

responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);

(2) The authorization is made in writing by a person designated under subsection (a); and

(3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

§11-55-08 Formulation of tentative determinations and draft permit. (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an individual permit. Tentative determinations shall include at least the following:

(1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and

(2) If the determination is to issue the individual permit, the following additional tentative determinations:

(A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;

(B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified under sections 11-55-21 and 11-55-22;

(C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and

(D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact upon the discharge described in the NPDES permit application.

(b) If a tentative determination is to issue an individual permit, the director shall organize the tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4,342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a) The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit,

under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

(1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
   (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
   (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or
   (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.

(2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and

(3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by 40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

(1) Name and address of the agency issuing the public notice;

(2) Name and address of each owner or operator or both and the name and address of the facility or activity;

(3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;

(4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;

(5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;

(6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;

(7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:

(A) Obtain further information;

(B) Request a copy of the draft permit prepared under section 11-55-08(b);

(C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and

(D) Inspect and copy NPDES forms and related documents; and

(8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or

operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4,342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

(1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;

(2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:

(A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in

gallons per day or million gallons per day or cubic feet per second;

(B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and

(C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;

(3) The tentative determinations required under section 11-55-08;

(4) A brief citation, including a brief identification of the uses for which the receiving state waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;

(5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:

(A) The thirty-day comment period required by section 11-55-09(b);

(B) Procedures for requesting a public hearing and the nature thereof; and

(C) Any other procedures by which the public may participate in the formulation of the final determinations;

(6) The name and telephone number of a person to contact for additional information; and

(7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.

(c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

§11-55-11 Notice to other government agencies.

(a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of Engineers of NPDES permit applications for discharges into state waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

(1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular state waters or parts thereof; and

(2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the Regional Administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

(1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and

(2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C. §1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-12 Public access to information. (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records,

reports, plans, or information obtained by the state agency under its participation in NPDES.

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the Regional Administrator for the Regional Administrator's concurrence in any determination of confidentiality. If the Regional Administrator advises the director that the Regional Administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the Regional Administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the Regional Administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

(1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or

(2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

§11-55-13 Public hearings. (a) The owner or operator, Regional Administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at

the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

§11-55-14 Public notice of public hearings. (a) Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11-55-13 shall be:

(1) Published at least once in a newspaper of general circulation within the geographical area of the discharge;

(2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;

(3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and

(4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.

(b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:

(1) Name and address of the agency holding the public hearing;

(2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;

(3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;

(4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;

(5) Information regarding the date, time, and location of the hearing;

(6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable:

(7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

(8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:

(A) Obtain further information;

(B) Request a copy of each draft permit prepared under section 11-55-08(b);

(C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and

(D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the

director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any additional periods not exceeding five years[.], except if the director administratively extends the permit until the effective date of the new permit for discharges that were covered prior to expiration. If previously granted permit covered prior to expiration, all permit limitations and conditions remain in force and effect.

Comment [RM4]: new

(b) The director shall issue or renew an NPDES permit on the following basis:

(1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:

(A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and

(B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;

(2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;

(3) The new or existing treatment works or waste outlet is designed and will be constructed or

modified to operate without causing a violation of applicable rules of the department;

(4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;

(5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and

(6) The facility shall comply with sections 11-55-27 through 11-55-32.

(c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:

(1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;

(2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into state waters and the effects of the wastes on the receiving state waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;

(3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and

(4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.

(d) The director may issue a permit to an existing facility which does not or cannot presently comply with subsections (b) and (c) only if the permit includes a schedule of compliance with specific deadlines for bringing the facility into compliance with subsections (b) and (c). Schedule of compliance shall comply with section 11-55-21.

(e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).

(f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit or grant a modification or variance for any of the following:

(1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into state waters;

(2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;

(3) Discharge to which the Regional Administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);

(4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or

(5) When prohibited by 40 CFR §122.4.

(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

§11-55-16 Modification or revocation and reissuance of NPDES permits. (a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.

(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.

(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.

(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

§11-55-17 Termination of permits and denial of renewal. (a) On the expiration date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each NPDES permit renewal application shall be subject to denial and each issued NPDES permit shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) The following are causes for terminating a permit during its term or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows

the same procedures as any draft permit prepared under 40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement. An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

(1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
(2) Standards of performance for new sources;
(3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
(4) More stringent limitation, including those:
    (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established

under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or

(B) Necessary to meet any other federal law or regulations including, but not limited to:

(i) Toxic pollutant effluent standards in 40 CFR Part 129;

(ii) Secondary treatment regulation in 40 CFR Part 133;

(iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;

(iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;

(v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and

(vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or

(C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;

(5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);

(6) Prior to promulgation by the Administrator of applicable effluent standards and limitations

under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and

(7) If the NPDES permit is for the discharge of pollutants into the state waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

(1) In accordance with any legally applicable schedule of compliance contained in:
    (A) Applicable effluent standards and limitations;
    (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
    (C) If more stringent, effluent standards and limitations needed to meet legally

applicable requirements listed in section 11-55-19; or

(2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

§11-55-22 Compliance schedule reports. (a) Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the Regional Administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of

thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement (as required under subsection (a). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(1) Name, address, and permit number of each noncomplying permittee;

(2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);

(3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

(c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES

permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

§11-55-23 Other terms and conditions of issued NPDES permits. In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

(1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;

(2) The permittee shall report at least as required by 40 CFR §122.41(l), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);

(3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);

(4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

(5) The permittee shall allow the director or an authorized agent, including a contractor of

the Administrator, upon the presentation of credentials to:

(A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;

(B) Have access to and copy any records kept under terms and conditions of the NPDES permit;

(C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or

(D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;

(6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;

(7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:

(A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;

(B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source

introducing pollutants into the treatment works at the time of issuance of the permit;

(C) The quality and quantity of effluent to be introduced into a treatment works; and

(D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;

(8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;

(9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a

permittee only when the operation is necessary to achieve compliance with the conditions of the permit; and

(10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and

(11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1284, 1311, 1316, 1317, 1318, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403; §§122.41, 122.42, 122.44, 123.25(a))

§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which

shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:

(1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;

(2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and

(3) Sample any discharge of pollutants or effluent.

(d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.

(e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:

(1) Establish and maintain records;

(2) Make reports;

(3) Install, use, and maintain monitoring equipment or methods;

(4) Sample effluent and state waters;

(5) Provide access to and copying of any records which are maintained; and

(6) Provide other information as the department may require. [Eff 11/27/81; am and comp 09/22/97; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50,

342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §§122.41(i))

§11-55-25 Transmission to Regional Administrator of proposed NPDES permits. The director shall transmit to the Regional Administrator copies of NPDES permits proposed to be issued by the agency in a manner as the director and Regional Administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and Regional Administrator shall provide for at least the following:

(1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;

(2) A period of time (up to ninety days) in which the Regional Administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;

(3) Procedures for state acceptance or rejection of a written objection by the Regional Administrator; and

(4) Any written waiver by the Regional Administrator of the Regional Administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387;

40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to Regional Administrator of issued NPDES permits. The director shall transmit to the Regional Administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.43(a)(3))

§11-55-27 Renewal of NPDES permits. (a) The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least one hundred eighty days prior to its expiration.

(b) The scope and manner of any review of an application for renewal of an NPDES permit shall be within the discretion of the director and shall be sufficiently detailed as to ensure the following:

(1) The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the current or expired NPDES permit;

(2) That the director has current information on the permittee's production levels; permittee's waste treatment practices; nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from

monitoring records and reports submitted to the director by the permittee; and

(3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period;

(1) A ten-year period beginning on the date of completion of the construction;

(2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or

(3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;

124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(l), 122.44, 123.25(a))

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge authorized by an NPDES permit which:

(1) Is not a minor discharge;

(2) The Regional Administrator requests, in writing, be monitored; or

(3) Contains toxic pollutants for which an effluent standard has been established by the Administrator under Section 307(a) of the Act, 33 U.S.C. §1317, shall be monitored by the permittee for at least the items listed in subsection (c).

(c) Monitored items:

(1) Flow (in gallons per day or cubic feet per second); and

(2) All of the following pollutants:

(A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the NPDES permit;

(B) Pollutants which the director finds, on the basis of available information, could have a significant impact on the quality of state waters;

(C) Pollutants specified by the Administrator in regulations issued under the Act, as subject to monitoring; and

(D) Any pollutants in addition to the above which the Regional Administrator requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

§11-55-29 Recording of monitoring activities and results. When any NPDES permit requires monitoring of the authorized discharge:

(1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;

(2) Any records of monitoring activities and results shall include for all samples:

(A) The date, exact place, and time of sampling or measurements;

(B) The individual(s) who performed the sampling or measurements;

(C) The date(s) the analyses were performed;

(D) The individual(s) who performed the analyses;

(E) The analytical techniques or methods used; and

(F) The results of the analyses; and

(3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original

strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(l)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless

other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

(b) In the case of a shut-down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours prior to the planned shut-down. The prior notice shall include, but is not limited to, the following:

(1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;

(2) The expected length of time that the water pollution control equipment will be out of service;
(3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut-down period;
(4) Measures that will be taken to minimize the length of the shut-down period, such as the use of off-shift labor and equipment;
(5) Identification of any adverse impacts to the receiving state waters which could be caused by the wastes which are to be bypassed; and
(6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.

(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.25(c))

§11-55-34 General permit definitions. As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

(1) Storm water point sources; or

(2) A group of point sources other than storm water point sources if all sources in the group:

(A) Involve the same or substantially similar types of operations;
(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
(C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
(D) Require the same or similar monitoring; and
(E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit.

"Geographical area" means existing geographical or political boundaries such as:
(1) Designated planning areas under Sections 208 and 303 of the Act;
(2) Sewer districts or sewer authorities;
(3) City, county, or state political boundaries;
(4) State highway systems;
(5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
(6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
(7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general

permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits [.] by a rule or by order issued by the director. A permit adopted by rule may be terminated by a later permit issued by order if the later permit covers the same activity and specifically provides for termination of the earlier permit.

Comment [RM5]: new

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

(1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities," dated October 2007, for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi);

(2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity," dated October 2007, for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area;

(3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities," dated October 2007, for

the discharge of treated effluent from the leaking underground storage tank remedial activities;

(4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day," dated October 2007, for the discharge of once-through, non-contact cooling water for one million gallons per day or less;

(5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters," dated October 2007, for the discharge of non-polluted hydrotesting water;

(6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering," dated October 2007, for the discharge of dewatering effluent from a construction activity;

(7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals," dated October 2007, for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals;

(8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities," dated October 2007, for the discharge of treated process wastewater effluent associated with well drilling activities;

(9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems," dated October 2007, for the discharge of treated process wastewater effluent from recycled water distribution systems;

(10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small

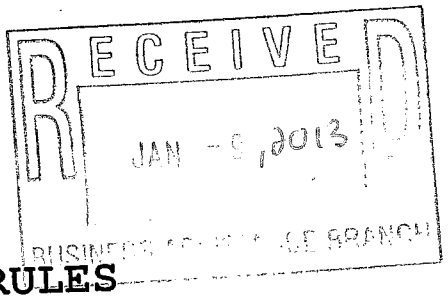
Small Business Impact Statement
Administrative Directive No. 09-01

Department of Health
Environmental Management Division
Clean Water Branch
Hawaii Administrative Rules (HAR)
Chapters 11-54 (Water Quality Standards) and
11-55 (Water Pollution Control)
Contact Person: Mr. Darryl Lum, CWB Engineering Section Supervisor

1. Explain the exact changes to be made and the purpose, reasons for the change, and justification for the change. If applicable, cite the present rule and quote the proposed rule change in full without paraphrasing:

   See below.

Exhibit 2



TEMPORARY ADMINISTRATIVE RULES

THESE ADMINISTRATIVE RULES ARE TEMPORARY RULES ISSUED PURSUANT TO SECTION 231-10.7, HAWAII REVISED STATUES.

AS TEMPORARY RULES, THESE ADMINISTRATIVE RULES BECOME EFFECTIVE SEVEN DAYS AFTER PUBLIC NOTICE IS ISSUED. THESE TEMPORARY ADMINISTRATIVE RULES TAKE EFFECT ON

_____.

TEMPORARY ADMINISTRATIVE RULES ARE EFFECTIVE FOR EIGHTEEN MONTHS. THESE TEMPORARY ADMINISTRATIVE RULES WILL EXPIRE ON

_____.

PERMANENT ADMINISTRATIVE RULES, SUBJECT TO PROCEDURAL REQUIREMENTS OF CHAPTER 91, HAWAII REVISED STATUTES, (THE HAWAII ADMINISTRATIVE PROCEDURES ACT), ARE SIMULTANEOUSLY BEING PROPOSED FOR FORMAL ADOPTION.

DEPARTMENT OF TAXATION

Adoption of Temporary Rules of
the Department of Taxation
Relating to the Renewable Energy Technologies;
Income Tax Credit; Citations,
§18-235-12.5-01T through §18-235-12.5-06T
Hawaii Administrative Rules

November 5, 2012

SUMMARY

1. Temporary Rules of the Department of Taxation, Relating to the Renewable Energy Technologies; Income Tax Credit; Citations, §18-235-12.5-01T through §18-235-12.5-06T, are adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 235

INCOME TAX LAW
RENEWABLE ENERGY TECHNOLOGIES; INCOME TAX CREDIT;
CITATIONS

RENEWABLE ENERGY TECHNOLOGIES; INCOME TAX CREDIT

1. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-01T to read as follows:

"**§18-235-12.5-01T Definitions.** (a) As used in section 235-12.5, HRS, and sections 18-235-12.5-01T through 18-235-12.5-05T:

(1) "Actual cost" means the amounts actually paid for renewable energy technology systems under section 235-12.5, HRS, subsection (a), including peripheral equipment ordinarily and necessarily required for system operation and installation. The amounts actually paid shall not include any consumer incentive payments or premiums offered with the system, regardless of when such payment or premium is made to the customer, and shall not include any amount for which another credit is claimed under chapter 235, HRS. Any costs incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of a solar or wind energy system shall not constitute a part of actual cost for the purposes of section 235-12.5, HRS.

(2) "Commercial property" means a property which cannot be properly characterized as residential or mixed-use property. A hotel, or any other place in which lodgings are regularly furnished to transients for consideration, in which all of the rooms, apartments, suites, or the like are occupied by a transient for less than one hundred eighty consecutive days for each letting will be considered commercial property to the extent of that use.

(3) "Installed and placed in service" means that the system is ready and available for its specific use. With respect to systems installed for residential property, all requirements will be completed and a system will be deemed to be

installed and placed in service when: (1) The actual cost has been incurred; (2) all installation, including all related electrical work, has been completed; and (3) any required requests for inspection of the installation has been received by the appropriate government agency. However, if the residential installation fails to pass all the required inspections the credit is properly claimed in the taxable year in which the system passes such inspection.

(4) "Mixed-use property" means a property on which at least one residence exists and commercial activity takes place.

(5) "Multi-family residential property" means a property on which more than one residence is located. The determination that property is multi-family residential property is fact specific, but in general and in the absence of other relevant facts to the contrary, multi-family residential property will be real property that is described in a recorded title and that has more than one mailing address or separate entrances to separate living areas. The following exceptions may apply:

(A) The Ohana House Exception: If a single property has two separate residences, each occupied by members of a family as defined in the Internal Revenue Code, section 267(b)(1), then each residence will be considered a separate single-family residential property if the system services both residences. Partners in a civil union will also be considered members of a family for the purpose of this exception; or

(B) The Directed Use Exception: If a system only services one residence on a multi-family residential property, then the system will be treated as servicing a single-family residential property.

(6) "Property" means a single, definable portion of real property located in the State as described in a title recorded with the Bureau of

Conveyances or Land Court of the state of Hawaii and that the applicable law allows to be sold in fee simple separately from any other real property located in the State. For purposes of the Renewable Energy Technologies Income Tax Credit under section 235-12.5, HRS, all such titled property in the State is to be characterized as commercial, residential, or a mix of the two (mixed-use).

(7) "Renewable energy technology system" means a new system that captures and converts a renewable source of energy, such as solar or wind energy, into a usable source of thermal or mechanical energy, electricity, or fuel.

(8) "Residence" means dwelling place or place of habitation, an abode.

(9) "Single-family residential property" means a property on which one residence is located.

(10) "Standard Test Conditions" means 25 degrees Celsius cell/module temperature, 1,000 watts per square meter (W/m^2) irradiance, air mass 1.5(AM 1.5) spectrum.

(11) "Total output capacity" means the combined individual output capacities (maximum power) of all identifiable facilities, equipment, apparatus or the like that make up the renewable energy technology system installed and placed in service during a taxable year measured in kilowatts. The total output capacity of a solar energy system shall be calculated using the manufacturer's published specifications of the components of the solar energy system. Generally, for photovoltaic solar energy systems, total output capacity is the output capacity (maximum power) of each cell, module or panel at Standard Test Conditions in kilowatts multiplied by the number of cells, modules or panels installed and placed into service during a taxable year. The amount of energy actually produced is not relevant to calculating total output capacity." [Eff] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

2. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-02T to read as follows:

"**§18-235-12.5-02T** [Reserved]"

3. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-03T to read as follows:

"**§18-235-12.5-03T Other Solar Energy Systems.** (a) "Solar energy system" means any identifiable facility, equipment, apparatus, or the like that converts solar energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation. Unless subsection (b) applies, each solar energy system installed and placed in service on or after January 1, 2013 shall have a total output capacity at Standard Test Conditions as follows:

(1) Single-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(A), HRS, each system for which a credit is claimed shall have a total output capacity of at least 5 kilowatts.

(2) Multi-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(B), HRS, each system for which a credit is claimed shall have a total output capacity of at least 0.360 kilowatts per unit per system.

(3) Commercial property: For credits calculated under section 235- 12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(C), HRS, each system for which a credit is claimed shall have a total output capacity of at least 1,000 kilowatts.

Example 1: Taxpayer installs and places into service solar energy equipment including 20 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family

residential property. The installation has a total output capacity of 5 kilowatts (0.250 kilowatts times 20 photovoltaic panels). One system has been installed and placed into service for the purpose of calculating the credit. The actual cost of the system may not be divided in order to claim multiple credits because the solar energy system only meets the total output capacity requirement for one system.

Example 2: Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.180 kilowatts on a multi-family residential property. The installation has a total output capacity of 7.2 kilowatts (0.180 kilowatts times 40 photovoltaic panels). If the installation serves 20 units, the total output capacity for each system must be at least 7.2 kilowatts (0.360 kilowatts times 20 units). One system has been installed and placed into service for the purpose of calculating the credit.

Example 3: Taxpayer installs and places into service solar energy equipment including 4,000 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a commercial property. The installation has a total output capacity of 1,000 kilowatts (0.250 kilowatts times 4,000 photovoltaic panels). Since each system must have a total output capacity of at least 1,000 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

Example 4: Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 10 kilowatts (0.250 kilowatts times 40 photovoltaic panels). Since each system must have a total output capacity of at least 5 kilowatts, two

systems have been installed and placed into service for the purpose of calculating the credit.

Example 5: During March of a taxable year, Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. During August of the same taxable year, Taxpayer installs and places into service additional equipment including 10 photovoltaic panels, each of which also has an output capacity (maximum power) of 0.250 kilowatts on the same the single-family residential property. The total output capacity of both installations is 5 kilowatts [(0.250 kilowatts times 10 photovoltaic panels)+ (0.250 kilowatts times 10 photovoltaic panels)] because the output capacity of both installations must be combined. Since each system must have a total output capacity of at least 5 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

(b) The credit may be claimed for one solar energy system installed and placed in service per property which fails to meet the applicable total output capacity requirement as set forth in subsections (a)(1) through (a)(3), where:

(1) Only one solar energy system, for the purposes of the credit, has been installed and placed in service during a taxable year on a single property; or

(2) More than one solar energy system, for the purposes of the credit, has been installed and placed in service during a taxable year on a single property and one of the systems fails to meet the applicable total output capacity requirement.

Example 6: Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum

power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 2.5 kilowatts (0.250 kilowatts times 10 photovoltaic panels). Although the system does not meet the total output capacity requirement, subsection (b)(1) permits the claiming of the credit because only one system has been installed and placed into service on one property.

Example 7: Taxpayer installs and places into service solar energy equipment on a single-family residential property which has a total output capacity of 7.5 kilowatts and an actual cost of $37,500. In order to calculate the credit, the actual cost per kilowatt must be determined by dividing the actual cost by the total output capacity. The actual cost per kilowatt is $5,000 ($37,500 divided by 7.5 kilowatts). Since a system installed and placed in service on a single-family residential property must have a total output capacity of at least 5 kilowatts, the actual cost of the first system is $25,000 ($5,000 times 5 kilowatts). The credit for the first system is $5,000 because thirty-five percent of $25,000 exceeds the applicable cap of $5,000. A credit for the second system may also be claimed because subsection (b)(2) permits taxpayers to claim the credit for one system per property that fails to meet the total output capacity requirement. The actual cost of the second system is $12,500 ($5,000 times 2.5 kilowatts). The credit for the second system is $4,375 or thirty-five percent of $12,500." [Eff] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

4. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-04T to read as follows:

"**§18-235-12.5-04T** [Reserved]"

5. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-05T to read as follows:

"**§18-235-12.5-05T Multiple Properties and Mixed-use Property.** (a) Property will be considered residential or mixed-use if any portion of the property is being used as a residence. If at the time of installation and placing in service of the system the property is not occupied, then property will be considered residential or mixed-use if any portion of the property is intended for use as a residence.

(b) Allocation. Where a single system is installed and placed in service to serve more than one property or to service a mixed-use property the taxpayer shall apply a reasonable allocation method such as square footage or a measure of use as follows:

(1) For a system installed and placed in service to serve more than one property, the actual cost of a single system servicing multiple properties is allocated among the properties. The actual cost of other solar energy systems shall be allocated in a manner consistent with section 18-235-12.5-03T. With multiple properties, the appropriate cap is applied for each separate property.

Example 1: Assume Taxpayer installs and places into service a wind farm that services one community of 50 single-family homes and 10 separate commercial properties. Each property is equal in size and use, the allocation of the actual cost would be made equally to each property. Further assume that a $600,000 wind-powered system were installed and placed in service for these properties, the credit would be calculated as follows: Allocation of cost: The actual cost of $600,000 would be divided equally among the properties, allocating $10,000 to each property. Single-family residential: Each single-family residential property would be treated

independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $1,500 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $1,500 credit, for a total of $75,000 (50 properties times $1,500). Commercial: Each commercial property would be treated independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $500,000 commercial property cap. Under the facts of this example, each commercial property would generate a $2,000 credit, for a total of $20,000 (10 properties times $2,000). The total credit for the $600,000 wind-powered system is $1,500 for each single-family residential property ($75,000) plus $2,000 for each commercial property ($20,000) for a total credit of $95,000.

Example 2: Taxpayer, an independent energy provider installs and places into service a wind farm that does not service any particular property, but is entirely directed into the energy grid of the local electricity provider. The renewable energy technology system will be considered to be servicing commercial property only; no allocation is necessary. However, if an identifiable connection exists to customers situated on the property where the power is produced in addition to a connection to the energy grid of the local electricity provider, then the cost of the system must be allocated among and between the particular property or properties being serviced and the connection to the energy grid, which is treated as servicing a single commercial property.

Example 3: Taxpayer installs and places into service solar energy equipment for a condominium that contains both residential and commercial units. Each condominium unit has a separate

title, so each unit would be treated as a separate property. The taxpayer must reasonably allocate the actual cost of the system between the residential and commercial properties. The condominium contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit is calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since there are 60 separate units that have equal energy use, the actual cost of a 1 kilowatt portion of the installation must be allocated to each unit. Thus, actual cost of $600,000 would be divided equally among the 60 properties, allocating $10,000 to each property. Single-family residential: Although each system does not meet the total output capacity requirement, subsection 18-235-12.5-03T(b)(1) allows a credit to be claimed for each system because only one system has installed and placed into service on each property. Each single-family residential condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $5,000 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $3,500 credit, for a total of $175,000 (50 units times $3,500). Commercial: Each commercial condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $500,000 commercial property cap. Each commercial property would generate a $3,500 credit, for a total of $35,000 (10 properties times $3,500). The total credit for the $600,000 photovoltaic energy system is $3,500 for each single-family condo unit ($175,000) plus $3,500 for each commercial condo unit ($35,000) for a total credit of $210,000.

(2) For a system installed and placed in service to service a mixed-use property, the actual cost of the system is allocated between the residential use (which may be single-family use or multiple-family use) and the commercial use. For a photovoltaic energy system, thirty-five percent of the cost allocated to residential use is compared against either the single-family residential cap or the multiple-family residential cap; and thirty-five percent of the cost allocated to commercial use is compared against the commercial property cap.

Example 4: Taxpayer is a farmer and has a dwelling and barn on one of the lots which is considered to be a mixed-use property. Taxpayer installs and places into service a renewable energy technology system that only services the barn. Allocation by use results in the system being subject only to the commercial property limitations. (Note: This is not an example of the directed use exception; an allocation would still be made, but it would be a 0% residential/100% commercial allocation based upon use.)

Example 5: Same facts as Example 4, but the system services both the barn and the dwelling. A portion of the system's actual cost would be subject to the commercial property limitations and the rest would be subject to the single-family residential property limitations.

Example 6: Taxpayer installs and places into service renewable energy technology equipment for an apartment complex that contains both residential and commercial units. Each unit is not separately titled, so each unit would not be treated as separate property. Instead, the titled property is the entire apartment complex. Since the titled property is mixed-use, the taxpayer will have to reasonably allocate the

actual cost of the system between the residential and commercial uses of the property. The complex contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit would be calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since each of the units has an equal energy use, the actual cost of $600,000 would be divided between residential use of the property and the commercial use of the property, allocating $500,000 ($10,000 times 50 units) to the residential use and $100,000 ($10,000 times 10 units) to the commercial use. Residential Use: Since the property contains more than one residence, the proper characterization of this use is multi-family residential. Because the installation serves 50 residential units, the total output capacity of each system must be at least 18 kilowatts (0.360 kilowatts times 50 units). The total output capacity of the residential portion of the installation is 50 kilowatts. For the purpose of calculating the credit, two systems that meet the total output capacity requirement and one system that fails to meet the requirement have been installed and placed into service. The actual cost for each of the two systems which meet the 18 kilowatt total output capacity requirement is $180,000 ($10,000 times 18 kilowatts) each. Thirty-five percent of $180,000, or $63,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). Because the credit is capped at $17,500 per system, the total credit for the two systems that meet the total output capacity requirement is $35,000 ($17,500 plus $17,500). The third system has an actual cost of $140,000 ($10,000 times 14 kilowatts). Although the system does not meet the total output capacity requirement the credit may be

claimed under subsection 18-235-12.5-03T(b)(2). Thirty-five percent of $140,000, or $49,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). The credit for the third system is $17,500 due to the cap. The total credit for the three systems serving the multi-family residential portion of the property is $52,500 ($17,500 times 3 systems). Commercial Use: Each system serving commercial property must have a total output capacity of at least 1,000 kilowatts. The total output capacity of the installation serving the commercial portion of the property is 10 kilowatts and the actual cost is $100,000 ($10,000 times 10 kilowatts). Since the portion of the installation serving commercial property fails to meet the total output capacity requirement and the credit is already claimed for a system that does not meet the applicable total output capacity requirement on a single property, a credit may not be claimed for the installation that serves the commercial portion of the property. The total credit for the entire $600,000 solar energy installation is $52,500. Note: A credit for the commercial part of the installation may have been claimed if the credit for the third multi-family residential system had not been claimed." [Eff] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

6. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-06T to read as follows:

"**§18-235-12.5-06T Application of sections 18-235-12.5-01T through 18-235-12.5-05T.** Sections 18-235-12.5-01T through 18-235-12.5-05T shall apply to renewable energy technology systems that are installed and placed in service on or after January 1, 2013. To the extent that sections 18-235-12.5-01T through 18-235-12.5-05T conflict with guidance issued by the

department prior to January 1, 2013, these sections shall prevail." [Eff] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

TEMPORARY ADMINISTRATIVE RULES

THESE ADMINISTRATIVE RULES ARE TEMPORARY RULES ISSUED PURSUANT TO SECTION 231-10.7, HAWAII REVISED STATUES.

AS TEMPORARY RULES, THESE ADMINISTRATIVE RULES BECOME EFFECTIVE SEVEN DAYS AFTER PUBLIC NOTICE IS ISSUED. THESE TEMPORARY ADMINISTRATIVE RULES TAKE EFFECT ON _____.

TEMPORARY ADMINISTRATIVE RULES ARE EFFECTIVE FOR EIGHTEEN MONTHS. THESE TEMPORARY ADMINISTRATIVE RULES WILL EXPIRE ON _____.

PERMANENT ADMINISTRATIVE RULES, SUBJECT TO THE PROCEDURAL REQUIREMENTS OF CHAPTER 91, HAWAII REVISED STATUTES, (THE HAWAII ADMINISTRATIVE PROCEDURES ACT), ARE SIMULTANEOUSLY BEING PROPOSED FOR FORMAL ADOPTION.

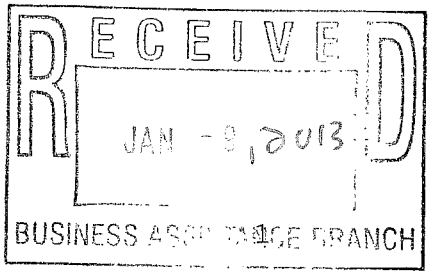
DEPARTMENT OF TAXATION

Adoption of Temporary Rules of
the Department of Taxation
Relating to the Renewable Energy Technologies;
Income Tax Credit; Citations,
§18-235-12.5-01T through §18-235-12.5-06T
Hawaii Administrative Rules

November 5, 2012

SUMMARY

1. Temporary Rules of the Department of Taxation, Relating to the Renewable Energy Technologies; Income Tax Credit; Citations, §18-235-12.5-01T through §18-235-12.5-06T, are adopted.



HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 235

INCOME TAX LAW
RENEWABLE ENERGY TECHNOLOGIES; INCOME TAX CREDIT;
CITATIONS

RENEWABLE ENERGY TECHNOLOGIES; INCOME TAX CREDIT

§18-235-12.5-01T Definitions. (a) As used in section 235-12.5, HRS, and sections 18-235-12.5-01T through 18-235-12.5-05T:

(1) "Actual cost" means the amounts actually paid for renewable energy technology systems under section 235-12.5, HRS, subsection (a), including peripheral equipment ordinarily and necessarily required for system operation and installation. The amounts actually paid shall not include any consumer incentive payments or premiums offered with the system, regardless of when such payment or premium is made to the customer, and shall not include any amount for which another credit is claimed under chapter 235, HRS. Any costs incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of a solar or wind energy system shall not constitute a part of actual cost for the purposes of section 235-12.5, HRS.

(2) "Commercial property" means a property which cannot be properly characterized as residential or mixed-use property. A hotel, or any other place in which lodgings are regularly furnished to transients for consideration, in which all of the rooms, apartments, suites, or the like are occupied by a transient for less than one hundred eighty consecutive days for each letting will be considered commercial property to the extent of that use.

(3) "Installed and placed in service" means that the system is ready and available for its specific use. With respect to systems installed for residential property, all requirements will be completed and a system will be deemed to be installed and placed in service when: (1) The actual cost has been incurred; (2) all installation, including all related electrical work, has been completed; and (3) any required requests for inspection of the installation has been received by the appropriate government agency. However, if the residential installation

fails to pass all the required inspections the credit is properly claimed in the taxable year in which the system passes such inspection.

(4) "Mixed-use property" means a property on which at least one residence exists and commercial activity takes place.

(5) "Multi-family residential property" means a property on which more than one residence is located. The determination that property is multi-family residential property is fact specific, but in general and in the absence of other relevant facts to the contrary, multi-family residential property will be real property that is described in a recorded title and that has more than one mailing address or separate entrances to separate living areas. The following exceptions may apply:

(A) The Ohana House Exception: If a single property has two separate residences, each occupied by members of a family as defined in the Internal Revenue Code, section 267(b)(1), then each residence will be considered a separate single-family residential property if the system services both residences. Partners in a civil union will also be considered members of a family for the purpose of this exception; or

(B) The Directed Use Exception: If a system only services one residence on a multi-family residential property, then the system will be treated as servicing a single-family residential property.

(6) "Property" means a single, definable portion of real property located in the State as described in a title recorded with the Bureau of Conveyances or Land Court of the state of Hawaii and that the applicable law allows to be sold in fee simple separately from any other real property located in the State. For purposes of the Renewable Energy Technologies Income Tax Credit under section 235-12.5, HRS, all such titled property in the State is to be characterized as commercial, residential, or a mix of the two (mixed-use).

(7) "Renewable energy technology system" means a new system that captures and converts a renewable source of energy, such as solar or wind energy,

into a usable source of thermal or mechanical energy, electricity, or fuel.

(8) "Residence" means dwelling place or place of habitation, an abode.

(9) "Single-family residential property" means a property on which one residence is located.

(10) "Standard Test Conditions" means 25 degrees Celsius cell/module temperature, 1,000 watts per square meter (W/m^2) irradiance, air mass 1.5(AM 1.5) spectrum.

(11) "Total output capacity" means the combined individual output capacities (maximum power) of all identifiable facilities, equipment, apparatus or the like that make up the renewable energy technology system installed and placed in service during a taxable year measured in kilowatts. The total output capacity of a solar energy system shall be calculated using the manufacturer's published specifications of the components of the solar energy system. Generally, for photovoltaic solar energy systems, total output capacity is the output capacity (maximum power) of each cell, module or panel at Standard Test Conditions in kilowatts multiplied by the number of cells, modules or panels installed and placed into service during a taxable year. The amount of energy actually produced is not relevant to calculating total output capacity. [Eff] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

§18-235-12.5-02T [Reserved]

§18-235-12.5-03T Other Solar Energy Systems. (a) "Solar energy system" means any identifiable facility, equipment, apparatus, or the like that converts solar energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation. Unless subsection (b) applies, each solar energy system installed and placed in service on or after January 1, 2013 shall have a total output capacity at Standard Test Conditions as follows:

(1) Single-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and

capped under section 235-12.5(b)(2)(A), HRS, each system for which a credit is claimed shall have a total output capacity of at least 5 kilowatts.

(2) Multi-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(B), HRS, each system for which a credit is claimed shall have a total output capacity of at least 0.360 kilowatts per unit per system.

(3) Commercial property: For credits calculated under section 235- 12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(C), HRS, each system for which a credit is claimed shall have a total output capacity of at least 1,000 kilowatts.

Example 1: Taxpayer installs and places into service solar energy equipment including 20 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 5 kilowatts (0.250 kilowatts times 20 photovoltaic panels). One system has been installed and placed into service for the purpose of calculating the credit. The actual cost of the system may not be divided in order to claim multiple credits because the solar energy system only meets the total output capacity requirement for one system.

Example 2: Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.180 kilowatts on a multi-family residential property. The installation has a total output capacity of 7.2 kilowatts (0.180 kilowatts times 40 photovoltaic panels). If the installation serves 20 units, the total output capacity for each system must be at least 7.2 kilowatts (0.360 kilowatts times 20 units). One system has been installed and placed into service for the purpose of calculating the credit.

Example 3: Taxpayer installs and places into service solar energy equipment including 4,000 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a commercial property. The installation has a total output capacity of 1,000 kilowatts (0.250 kilowatts times 4,000 photovoltaic

panels). Since each system must have a total output capacity of at least 1,000 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

Example 4: Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 10 kilowatts (0.250 kilowatts times 40 photovoltaic panels). Since each system must have a total output capacity of at least 5 kilowatts, two systems have been installed and placed into service for the purpose of calculating the credit.

Example 5: During March of a taxable year, Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. During August of the same taxable year, Taxpayer installs and places into service additional equipment including 10 photovoltaic panels, each of which also has an output capacity (maximum power) of 0.250 kilowatts on the same the single-family residential property. The total output capacity of both installations is 5 kilowatts [(0.250 kilowatts times 10 photovoltaic panels)+ (0.250 kilowatts times 10 photovoltaic panels)] because the output capacity of both installations must be combined. Since each system must have a total output capacity of at least 5 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

(b) The credit may be claimed for one solar energy system installed and placed in service per property which fails to meet the applicable total output capacity requirement as set forth in subsections (a)(1) through (a)(3), where:

(1) Only one solar energy system, for the purposes of the credit, has been installed and placed in service during a taxable year on a single property; or

(2) More than one solar energy system, for the purposes of the credit, has been installed and

placed in service during a taxable year on a single property and one of the systems fails to meet the applicable total output capacity requirement.

Example 6: Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 2.5 kilowatts (0.250 kilowatts times 10 photovoltaic panels). Although the system does not meet the total output capacity requirement, subsection (b)(1) permits the claiming of the credit because only one system has been installed and placed into service on one property.

Example 7: Taxpayer installs and places into service solar energy equipment on a single-family residential property which has a total output capacity of 7.5 kilowatts and an actual cost of $37,500. In order to calculate the credit, the actual cost per kilowatt must be determined by dividing the actual cost by the total output capacity. The actual cost per kilowatt is $5,000 ($37,500 divided by 7.5 kilowatts). Since a system installed and placed in service on a single-family residential property must have a total output capacity of at least 5 kilowatts, the actual cost of the first system is $25,000 ($5,000 times 5 kilowatts). The credit for the first system is $5,000 because thirty-five percent of $25,000 exceeds the applicable cap of $5,000. A credit for the second system may also be claimed because subsection (b)(2) permits taxpayers to claim the credit for one system per property that fails to meet the total output capacity requirement. The actual cost of the second system is $12,500 ($5,000 times 2.5 kilowatts). The credit for the second system is $4,375 or thirty-five percent of $12,500. [Eff] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

§18-235-12.5-04T [Reserved]

§18-235-12.5-05T Multiple Properties and Mixed-use Property. (a) Property will be considered

residential or mixed-use if any portion of the property is being used as a residence. If at the time of installation and placing in service of the system the property is not occupied, then property will be considered residential or mixed-use if any portion of the property is intended for use as a residence.

(b) Allocation. Where a single system is installed and placed in service to serve more than one property or to service a mixed-use property the taxpayer shall apply a reasonable allocation method such as square footage or a measure of use as follows:

(1) For a system installed and placed in service to serve more than one property, the actual cost of a single system servicing multiple properties is allocated among the properties. The actual cost of other solar energy systems shall be allocated in a manner consistent with section 18-235-12.5-03T. With multiple properties, the appropriate cap is applied for each separate property.

Example 1: Assume Taxpayer installs and places into service a wind farm that services one community of 50 single-family homes and 10 separate commercial properties. Each property is equal in size and use, the allocation of the actual cost would be made equally to each property. Further assume that a $600,000 wind-powered system were installed and placed in service for these properties, the credit would be calculated as follows: Allocation of cost: The actual cost of $600,000 would be divided equally among the properties, allocating $10,000 to each property. Single-family residential: Each single-family residential property would be treated independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $1,500 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $1,500 credit, for a total of $75,000 (50 properties times $1,500). Commercial: Each commercial property would be treated independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $500,000 commercial property cap. Under the facts of this example, each commercial property would generate a $2,000 credit, for a total of

$20,000 (10 properties times $2,000). The total credit for the $600,000 wind-powered system is $1,500 for each single-family residential property ($75,000) plus $2,000 for each commercial property ($20,000) for a total credit of $95,000.

Example 2: Taxpayer, an independent energy provider installs and places into service a wind farm that does not service any particular property, but is entirely directed into the energy grid of the local electricity provider. The renewable energy technology system will be considered to be servicing commercial property only; no allocation is necessary. However, if an identifiable connection exists to customers situated on the property where the power is produced in addition to a connection to the energy grid of the local electricity provider, then the cost of the system must be allocated among and between the particular property or properties being serviced and the connection to the energy grid, which is treated as servicing a single commercial property.

Example 3: Taxpayer installs and places into service solar energy equipment for a condominium that contains both residential and commercial units. Each condominium unit has a separate title, so each unit would be treated as a separate property. The taxpayer must reasonably allocate the actual cost of the system between the residential and commercial properties. The condominium contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit is calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since there are 60 separate units that have equal energy use, the actual cost of a 1 kilowatt portion of the installation must be allocated to each unit. Thus, actual cost of $600,000 would be divided equally among the 60 properties, allocating $10,000 to each property. Single-family residential: Although each system does not meet

the total output capacity requirement, subsection 18-235-12.5-03T(b)(1) allows a credit to be claimed for each system because only one system has installed and placed into service on each property. Each single-family residential condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $5,000 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $3,500 credit, for a total of $175,000 (50 units times $3,500). Commercial: Each commercial condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $500,000 commercial property cap. Each commercial property would generate a $3,500 credit, for a total of $35,000 (10 properties times $3,500). The total credit for the $600,000 photovoltaic energy system is $3,500 for each single-family condo unit ($175,000) plus $3,500 for each commercial condo unit ($35,000) for a total credit of $210,000.

(2) For a system installed and placed in service to service a mixed-use property, the actual cost of the system is allocated between the residential use (which may be single-family use or multiple-family use) and the commercial use. For a photovoltaic energy system, thirty-five percent of the cost allocated to residential use is compared against either the single-family residential cap or the multiple-family residential cap; and thirty-five percent of the cost allocated to commercial use is compared against the commercial property cap.

Example 4: Taxpayer is a farmer and has a dwelling and barn on one of the lots which is considered to be a mixed-use property. Taxpayer installs and places into service a renewable energy technology system that only services the barn. Allocation by use results in the system being subject only to the commercial property limitations. (Note: This is not an example of the directed use exception; an allocation would still be made, but it would be a 0%

residential/100% commercial allocation based upon use.)

Example 5: Same facts as Example 4, but the system services both the barn and the dwelling. A portion of the system's actual cost would be subject to the commercial property limitations and the rest would be subject to the single-family residential property limitations.

Example 6: Taxpayer installs and places into service renewable energy technology equipment for an apartment complex that contains both residential and commercial units. Each unit is not separately titled, so each unit would not be treated as separate property. Instead, the titled property is the entire apartment complex. Since the titled property is mixed-use, the taxpayer will have to reasonably allocate the actual cost of the system between the residential and commercial uses of the property. The complex contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit would be calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since each of the units has an equal energy use, the actual cost of $600,000 would be divided between residential use of the property and the commercial use of the property, allocating $500,000 ($10,000 times 50 units) to the residential use and $100,000 ($10,000 times 10 units) to the commercial use. Residential Use: Since the property contains more than one residence, the proper characterization of this use is multi-family residential. Because the installation serves 50 residential units, the total output capacity of each system must be at least 18 kilowatts (0.360 kilowatts times 50 units). The total output capacity of the residential portion of the installation is 50 kilowatts. For the purpose of calculating the credit, two systems that meet the total output capacity requirement and one system that fails to meet the requirement have been installed and

placed into service. The actual cost for each of the two systems which meet the 18 kilowatt total output capacity requirement is $180,000 ($10,000 times 18 kilowatts) each. Thirty-five percent of $180,000, or $63,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). Because the credit is capped at $17,500 per system, the total credit for the two systems that meet the total output capacity requirement is $35,000 ($17,500 plus $17,500). The third system has an actual cost of $140,000 ($10,000 times 14 kilowatts). Although the system does not meet the total output capacity requirement the credit may be claimed under subsection 18-235-12.5-03T(b)(2). Thirty-five percent of $140,000, or $49,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). The credit for the third system is $17,500 due to the cap. The total credit for the three systems serving the multi-family residential portion of the property is $52,500 ($17,500 times 3 systems). Commercial Use: Each system serving commercial property must have a total output capacity of at least 1,000 kilowatts. The total output capacity of the installation serving the commercial portion of the property is 10 kilowatts and the actual cost is $100,000 ($10,000 times 10 kilowatts). Since the portion of the installation serving commercial property fails to meet the total output capacity requirement and the credit is already claimed for a system that does not meet the applicable total output capacity requirement on a single property, a credit may not be claimed for the installation that serves the commercial portion of the property. The total credit for the entire $600,000 solar energy installation is $52,500. Note: A credit for the commercial part of the installation may have been claimed if the credit for the third multi-family residential system had not been claimed. [Eff] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

§18-235-12.5-06T Application of sections 18-235-12.5-01T through 18-235-12.5-05T. Sections 18-235-12.5-01T through 18-235-12.5-05T shall apply to renewable energy technology systems that are installed and placed in service on or after January 1, 2013. To the extent that sections 18-235-12.5-01T through 18-235-12.5-05T conflict with guidance issued by the department prior to January 1, 2013, these sections shall prevail. [Eff] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

DEPARTMENT OF TAXATION

Chapter 18-235, Hawaii Administrative Rules, on the Summary Page dated November 5, 2012, were submitted to the Governor as temporary rules for approval on November 5, 2012. As is required by section 231-10.7, Hawaii Revised Statutes, these temporary administrative rules are also being submitted as formal administrative rules pursuant to Chapter 91, Hawaii Revised Statutes.

Statewide, public notice is by publication in the following newspapers on the following dates:

The Honolulu Star-Advertiser, November ____, 2012;

West Hawaii Today, November ____, 2012:

Hawaii Tribune-Herald, November ____, 2012;

The Maui News, November ____, 2012.

The temporary adoption of chapter 18-235, Hawaii Administrative Rules, as amended, shall take effect on _____. Pursuant to section 231-10.7, Hawaii Revised Statutes, these rules shall be effective for eighteen months from their effective date.

_____
FREDERICK D. PABLO
Director of Taxation

APPROVED:

_____
NEIL ABERCROMBIE
Governor
State of Hawaii

Dated:_____

Exhibit 3

State of Hawaii
Department of Agriculture
Quality Assurance Division
Honolulu, Hawaii

A summary of the proposed amendments to Chapter 4-143, Hawaii Administrative Rules, is as follows:

1. **Section 4-143-1**

   Requires Hawaii-grown green or natural coffee be marked with the exact grade or lower grade;

   Requires cherry, parchment, green or natural coffees be labeled with the exact recognized geographic region either on the bag, a tag which is sewn on the bag or on a form accompanying each container.

2. **Section 4-143-2**

   Repeals exemptions to mandatory certification. Exemptions are not needed for the mandatory requirement for certification has been removed statutorily;

   Increases the fee for additional copy of an issued certificate from $1 per page to $48 per page. This is due to the time it takes for staff to research previously issued certificates for those applicants who requests for an additional copy of a certificate previously issued much earlier;

   Increases the regular hourly inspection fee rate from $31.00 per hour to $48.00 per hour and the overtime inspection fee rate from $46.50 to $72.00 per hour. The hourly fee rates have not been changed for more than ten years. The proposed rate reflects the calculated current average salaries of the full-time staff;

   Establishes the fee rate for an appeal inspection from $150.00 to $350.00 or the hourly fee rate and other charges, whichever is greater;

3. **Section 4-143-3**

   Establishes a definition for "Hawaii Island" as a recognized geographic region and "Hawaii Island coffee".

   Establishes a definition for "natural coffee" and other recognized geographic regions for natural coffee;

   Other necessary housekeeping changes.

4. **Section 4-143-4**

   Repeals the standards for grades of cherry coffee grown in the geographic region of Kona. This standard was established only for Kona coffee and has not been used by the

industry for many years. Grading system currently being utilized by the industry is based on green bean.

5. **Section 4-143-5**

   Repeals the standards for parchment grades of coffee. This standard has not been used by the industry for many years. Grading system currently being utilized by the industry is currently based on green bean.

6. **Section 4-143-6**

   Standards for grades of green coffee amended to include the addition of Hawaii Island and Oahu green coffee grade standards;

   Removes a two-tenth percentage points and the plus or minus tolerance of 0.3 percentage points on moisture;

   Amends the total defect allowed for Hawaii Prime coffee from fifteen to twenty percent.

   Establishes additional defect criteria for allowing pinholes caused by insect damage. This is to address the pinholes damage caused by the Coffee Berry Borer which is considered to not impact the cupping quality.

7. **Section 4-143-7 (repeal)**

   Repeals the minimum export requirement for green coffee. All grades of coffee are already allowed to be exported, provided that they are properly labeled;

8. **Section 4-143-8**

   Amends provisions for enforcement, penalties, and prosecution section for consistency with other amendments.

9. **Section 4-143-9**

   Amends abbreviations section for consistency with other amendments.

10. **Section 4-143-10 (repeal)**

    Repeals the coffee quality verification program which is a self certification program for dry millers. Since its adoption, no miller has utilized this program and Act 328, SLH 2012 allows for a voluntary certification program.

11. **Section 4-143-11 (new section within the administrative rules)**

    Establishes a Hawaii Natural Prime grade standard for Hawaii-grown natural coffee. Criteria being proposed is similar to the requirements of Hawaii Prime grade green coffee standards, and allows for characteristics specific to natural coffee.